



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAILED

AUG 19 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

William Reeves
P.O. Box 23
North Brandford, CT 06471

In re Application of
William F. Reeves
Application No. 09/583,336
Filed: May 31, 2000
For: COMPUTER INSTRUMENTS AND
EMERGENCY MONITORING DEVICES
FOR RETRIEVING AND DISPLAYING
STORED MEDICAL RECORDS FROM
BODILY WORN DEVICES

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in response to applicant's communications filed in the United States Patent and Trademark Office (USPTO), on January 24, 2003, January 27, 2003, February 4, 2003 and June 4, 2003. These communications are being treated as a petition to withdraw the holding of abandonment. The delay in treating this petition is sincerely regretted.

The petition is **DISMISSED**.

A review of the file record reveals that an Office action was mailed on June 21, 2002. Since a proper response was not filed before the expiration of the six-month statutory period for reply, the application is abandoned, although a Notice of abandonment has not yet been mailed.

A further review of the file record reveals that a petition for an extension of time was filed by facsimile on November 21, 2002. However, that petition was not granted since it did not include payment of the required fee. Another petition for an extension of time, along with a response to the June 21, 2002 Office action, was received on January 29, 2003. However, the fee submitted with the petition was insufficient for a 2 month extension of time and the response was received beyond the 6 month statutory period to respond. As of January 1, 2003, the required fee for a two-month extension of time for a small entity is \$205. Applicant submitted a check for \$200. Furthermore, since the response was not received until January 29, 2003 and there was no Certificate of Mail or other valid evidence to accord the response an earlier filing date, the two month extension of time, even if submitted in the correct amount, would not have made the response timely. The response was received beyond the maximum extendible period of 6 months, the point at which the application became abandoned.

In the communication filed January 24, 2003, applicant argues that the petition for extension of time and payment of the required fee was mailed on about November 17,

2002. Included with the communication is a copy of the canceled check. Applicant argues that the canceled check shows a processing date of November 27, 2002. However, there is no record of the check having been received for the instant application. And, as stated above, even if the \$200. extension of time fee was credited on November 27, 2002, since the response was not received prior to the expiration of the 6 month statutory period (in this case December 23, 2002), no amount of fees would have prevented the application from becoming abandoned.

Since the response of January 29, 2003 did not include any valid evidence to accord a date earlier than the date of receipt in the USPTO, the application has been properly held as abandoned. For applicant's future use, attached to this decision is a guide to assist applicant in obtaining the earliest possible filing date and to protect that date should a response become lost.

Since applicant's petition to withdraw the Holding of Abandonment will not be granted applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37

CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,300. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.


The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."



Steven N. Meyers, Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

snm/tpl: 8/13/03

Attachment: Pro Se Guide for Submitting Responses

It appears that the applicant in this application is a *pro se* applicant (an inventor filing the application alone without the benefit of a Patent Attorney or Agent). Applicant may not be aware of the preferred methods of ensuring timely filing of responses to communications from the Office and may wish to consider using the Certificate of Mailing or the Certificate of Transmission procedures outlined below.

CERTIFICATE OF MAILING

To ensure that the Applicant's mailed response is considered timely filed, it is advisable to include a "certificate of mailing" on at least one page (preferably on the first page) of the response. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: "Commissioner of Patents and Trademarks, Washington, D.C. 20231" on (date).

(Typed or printed name of the person signing this certificate)

(signature)

CERTIFICATE OF TRANSMISSION

Alternatively, if applicant wishes to respond by facsimile rather than by mail, another method to ensure that the Applicant's response is considered timely filed, is to include a "certificate of transmission" on at least one page (preferably on the first page) of the response. This method should be used by foreign applicants without access to the U.S. Postal Service. This "certificate" should consist of the following statement:

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)____-____ on (date).

(Typed or printed name of the person signing this certificate)

(signature)

These "Certificates" may appear anywhere on the page, and may be handwritten or typed. They must be signed, and the date must be the actual date on which it is mailed or transmitted. For the purpose of calculating extensions of time, the date shown on the certificate will be construed as the date on which the paper was received by the Office, regardless of the date the U.S. Postal Service actually delivers the response, or the fax is "date-stamped" in. In this way, postal or transmission delays do not affect the extension-of-time fee.

In the event that a communication is not received by the Office, applicant's submission of a copy of the previously mailed or transmitted correspondence showing the **originally** signed Certificate of Mailing or Transmission statement thereon, along with a statement from the person signing the statement which attests to the timely mailing or transmitting of the correspondence, would be sufficient evidence to entitle the applicant to the mailing or transmission date of the correspondence as listed on the Certificate of Mailing or Transmission, respectively.

NOTICE TO APPLICANT: In the case of lost or late responses the use of other "receipt producing" forms of mailing a correspondence to the Patent Office, such as Certified Mail, or a private shipper such as FedEx, **WILL NOT** result in the applicant getting the benefit of the mailing date on such receipts. These receipts are not considered to be acceptable evidence since there is nothing to "tie-in" the receipt with the particular document allegedly submitted.